REMARKS

In response to the Office Action mailed May 1, 2009 ("Office Action"), Applicants respectfully request reconsideration in view of the following remarks. Claims 1, 2, 9, 10, 13 and 14 are pending. Claims 3-8, 11, and 12 are withdrawn. No new matter has been introduced.

Rejection under 35 USC §112, second paragraph

Claim 13 is rejected under 35 USC §112, second paragraph, because "The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention."

Specifically, the Office Action states, *inter alia*, "Claim 13 recited the limitation "a synergistic composition as claimed in claim 1" in reference to the composition of claim 1. There is insufficient antecedent basis for this limitation in the claim."

Applicants have amended claim 13 to delete the term "synergistic". Accordingly, the applicants submit that claim 13 meets the requirements of 35 USC §112, second paragraph, and thus the claim is in condition for allowance.

Rejections under 35 USC §103(a)

Claims 1, 2, 13, and 14 are rejected under 35 USC §103(a) for "being unpatentable over Nelson et al. (US 6,207,695)."

Specifically, the Office Action asserts, *inter alia*, "It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Nelson et al. to utilize a composition comprising imazalil and DDAC. One would have been motivated to combine imazalil and DDAC because Nelson et al. teach that the combination of imazlil with other compounds selected from DDAC give a broader spectrum of activity or a greater level of intrinsic activity then when imazalil is used alone."

The aforementioned rejection is respectfully traversed. Applicants respectfully disagree with the Office Action regarding the aforementioned rejection for at least two reasons. First, Nelson et al. relates to the (S)-enantiomer of imazalil, not imazalil itself. Specifically, Nelson et al states "Futhermore, it could not have been assumed, based on the existing uses of Imazilil, that a reduction or complete elimination of the proportion of (R)-enantiomer in the racemate would solve the problem of delivering a maximally effective fungicide while ameliorating the unnecessary cost associated with the use of ineffective or marginally effective compounds. (See, column 4, lines 2-8) Again, Nelson is directed to the

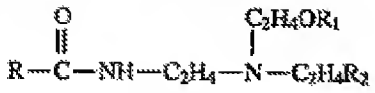
(S)-enantiomer of imazalil. Second, DDAC is mentioned as one compound in a very large list of possible additional fungicidal compounds to be added to the (S)-enantiomer of imazalil. Nelson et al. do not teach that DDAC is a special additional fungicide and does not "single out" DDAC. Further, there is no data or examples combining imazalil with another fungicidal compound. The lack of data, examples and teaching such a combinations cannot make the present invention obvious. Accordingly, the applicants respectfully submit that the claimed compounds are not prima facie obvious over Nelson et al. Thus, applicants request withdrawal of the rejection under 35 U.S.C. §103(a).

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson et al. (US 6,207,695) in view of Hall et al. (US 5,547,990).

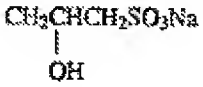
Specifically, the Office Action asserts, *inter alia*, that "Hall et al. teach combinations of imidazoline (a conazole) based amphoterics and quaternary ammonium compounds which show reduced irritation profiles while having excellent cleaning detergency (abstract). Hall et al teach didecyl dimethyl ammonium chloride as DIDAC is the preferred and shows synergistic irritation reduction. The ratio of quaternary ammonium to amphoteric surfactants has useful ranges from 11:1-0. 1:1 and concentrations of 10-10,000ppm (Table 1, column 4, lines 56-61).

The aforementioned rejection is respectfully traversed. Applicants respectfully disagree with the Office Action regarding the aforementioned rejection for several reasons. First, the Office Action alleges that the "imidazole amphoteric surfactants" as mentioned in Hall et al. are "conazole" and since imazalil is a "conazole" the combination of DDAC with imazalil is obvious for the skilled person. The applicants strongly disagree with that assertion. Notably, Nelson et al. nowhere mentions that the "imidazole amphoteric surfactants" as disclosed in US-5,547,990 are "conazoles". In fact, the term "conazoles" is nowhere mentioned in Hall et al. (US 5,547,990). There is a reason for this, "imidazoline compounds" are described in Hall et al. in column 4, lines 14 to 36, as follows:

The imidazoline amphoteric surfactants used in the present invention have the following general structure, according to the CTFA Cosmetic Ingredient Dictionary, Third Edition, published by the Cosmetic, Toiletry and Fragrance Association, Inc., Washington, D.C.:



wherein R may be a fatty acid alkyl of 6 to 22 carbons; R_1 may be H or C_2H_4COOH or C_2H_4COONa; R_2 may be COONa or



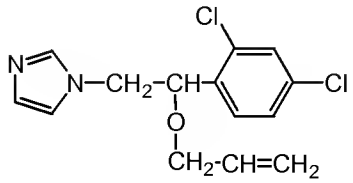
or C_2H_4COONa or CH_2COOCH_2COOH or CH_2COOCH_2COONa.

Specific examples of amphoteric surfactants that can be used in the present invention include sodium cocoamphoacetate, disodium cocoamphodiacetate, sodium cocoamphopropionate, and disodium cocoamphodipropionate.

Also, in column 4, lines 6 to 12, :

> Commercially available imidazoline amphoteric surfactants can be used in the present invention and are generally synthesized by reacting a fatty acid with an amino ethyl ethanol amine to form an amide. Water is efficiently removed to form an imidazoline, which is then reacted with methyl acrylate and neutralized to produce the corresponding sodium salts.

The above definition and description of imidazoline amphoteric surfacants should be viewed in light of the structure of imazalil:



(II-a)

As illustrated above, imazalil has a very different structure and is not covered under the definition of "imidazoline amphoteric surfactants" as described in Hall et al. Therefore,

imazalil is not contemplated in the teachings of Hall et al. Furthermore, Hall et al. states that the "imidazoline amphoteric surfactants" are surfactants and is silent as to their possible fungicidal properties. Therefore, the assertion that the "imidazoline compounds" are conazole compounds such as imazalil is unfounded and the skilled person would not have found any teaching or motivation in Hall et al. to combine DDAC with the fungicidal compound imazalil. Accordingly, the applicants respectfully submit that the claimed compounds are not prima facie obvious over Nelson et al in view of Hall et al. Thus, applicants request withdrawal of the rejection under 35 U.S.C. §103(a).

Please charge any fees, which may be required for this submission to Johnson & Johnson Deposit Account 10-0750/PRD2188USPCT/JKM.

Should the Examiner have any questions regarding this Response, please contact the undersigned attorney at the telephone number listed below.

Respectfully submitted,

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